

# Annual Survey of Massachusetts Law

---

Volume 1966

Article 25

---

1-1-1966

## Chapter 22: State and Local Taxation

Nicholas L. Metaxas

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/asml>



Part of the [Taxation-State and Local Commons](#)

---

### Recommended Citation

Metaxas, Nicholas L. (1966) "Chapter 22: State and Local Taxation," *Annual Survey of Massachusetts Law*: Vol. 1966, Article 25.

## C H A P T E R 2 2

# State and Local Taxation

NICHOLAS L. METAXAS

### A. SUMMARY

**§22.1. State tax developments.** In the 1965 ANNUAL SURVEY year, there was no chapter on state and local taxation. The developments during that year were minimal in both the judicial and legislative areas. They will be reviewed in this year's discussion. The 1965 period, however, was marked by the "Great Tax Debate," which lasted for fourteen months, and finally resulted during the 1966 SURVEY year in the most significant changes in state taxation that this Commonwealth has experienced in its entire history.

The much-publicized controversy between the enactment of a sales tax or increases in the personal income tax was finally resolved in favor of the former. At the same time, several other new taxes were enacted and existing ones increased. This represented the single largest tax program in this state's history. The tax revenues of the Commonwealth were thereby increased by approximately \$185,000,000, which was 30 per cent more than previously collected. Complementing this revenue-producing measure, the 1966 SURVEY year also saw the passage of a far-reaching omnibus tax reform bill, affecting a number of our tax laws, especially the personal income tax and the business corporation excise. The 1966 SURVEY year has been a momentous one in both the revenue producing and reform areas, one that will not easily be surpassed in the future.

**§22.2. Local tax developments.** The most significant event in local taxation during the 1966 SURVEY year was the enactment of the sales tax, which resulted in additional revenue for the cities and towns under a new statutory distribution formula. As a result, most local property tax rates in 1966 were either lowered or stabilized at 1965 levels. Cities and towns have also been moving slowly, but steadily, toward full and fair cash value assessments on real and personal property, in part as a result of continuing pressure by the courts. However, the enactment of additional and more liberal exemptions from local property taxes for various types of property owners continue to erode the local property tax base.

NICHOLAS L. METAXAS is Assistant Chief of the Legal Bureau of the Massachusetts Department of Corporations and Taxation. He is a member of the Massachusetts and federal Bars.

B. SALES AND USE TAX

§22.3. **Enactment.** On March 2, 1966, the Governor signed Chapter 14 of the Acts of 1966, thereby enacting a \$185,000,000 tax program. The major part of this act was a new 3 per cent sales and use tax, estimated to bring in \$150,000,000 annually. This temporary tax is in effect from April 1, 1966, to December 31, 1967.<sup>1</sup> On a referendum question as to whether Chapter 14 should be repealed, the voters of the Commonwealth, on November 8, 1966, upheld the entire act by a 3-1 vote. If it is to continue beyond 1967, however, it will have to be extended or re-enacted during the ensuing legislative year.

§22.4. **Scope of the tax.** The sales tax law levies a three per cent excise upon retail sales of tangible personal property in the Commonwealth. The vendor, against whom the tax is levied, is reimbursed by the purchaser according to a statutory tax table. The sales tax is supplemented by a 3 per cent use tax upon tangible personal property purchased outside Massachusetts for storage, use, or other consumption in this state. By its terms, the sales tax does not apply to sales of real estate or sales of intangible personal property. Further, it does not apply to tickets for admissions to places of amusement and sports; transportation or communication services; professional, insurance, or personal service transactions in which sales of tangible personal property are inconsequential elements for which no separate charges are made; the execution of a contract of sale where the property sold is not in the Commonwealth at the time of execution; or rights and credits, insurance policies, bills of exchange, stocks and bonds, and similar evidences of indebtedness or ownership.<sup>1</sup> However, the producing, fabricating, processing, printing or imprinting of tangible personal property for customers who furnish the materials used therein is specifically made taxable.<sup>2</sup>

The sales tax applies to the "sale" of tangible personal property. Under the statute, the sale takes place when there is a "transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property for a consideration, in any manner or by any means whatsoever."<sup>3</sup> Since normally the transfer of both title and possession takes place simultaneously, the sale would thus occur upon delivery of the goods. However, if the parties to the transaction so intend, title may pass prior to delivery. In such a case, the sale takes place, for sales tax purposes, upon passage of title rather than upon delivery. The point in time at which the sale occurred was initially important, under the act, in order to determine whether the

§22.3. <sup>1</sup> As a temporary measure effective for 21 months only, the sales and use tax law did not become a part of the General Laws. It is contained in Sections 1 and 2 of Chapter 14 of the Acts of 1966, with transitional provisions in Sections 3 and 4 thereof.

§22.4. <sup>1</sup> Acts of 1966, c. 14, §1, subsec. 1(13), (15).

<sup>2</sup> Id. subsec. 1(12)(b).

<sup>3</sup> Id. subsec. 1(12)(a).

sale occurred prior or after the taxable date of April 1, 1966. The time of a sale continues to be relevant in any determination of the location of the sale. Since only sales in Massachusetts are taxable, a transfer of title or possession outside this state would exempt the transaction from the Massachusetts sales tax.

The definition of a "sale" also includes the rental of tangible personal property. In any case in which the sale of property would be taxable, the rental of such property would be similarly taxable. Moreover, "sale" also includes as a taxable event the exchange or barter of property. This means that the value of property that is transferred to the seller as a trade-in upon the purchase of similar property is part of the sales price as much as the cash amount paid and, therefore, subject to tax. The only exceptions are motor vehicles, trailers, farm tractors, and boats. The law specifically provides for a deduction for the trade-in allowance in computing the sales tax upon the purchase of a motor vehicle, trailer, farm tractor, or boat from a registered dealer.<sup>4</sup>

Upon the sale of tangible personal property as so determined, the tax is based upon the "sales price" of the goods, which is defined as "the total amount paid by a purchaser to a vendor as consideration for a retail sale, valued in money or otherwise" with a number of inclusions and exclusions.<sup>5</sup> The inclusions specified are the cost of property sold; the cost of materials used; labor or service cost, interest charges, losses, or other expenses; the cost of transportation of the property prior to its sale at retail; any amount paid for any services that are a part of the sale; and any amount for which credit is given to the purchaser by the vendor. The statute excludes from the "sales price" cash discounts allowed and taken on sales;<sup>6</sup> the amount charged for property returned within 90 days by purchasers when the entire amount charged therefor is refunded; the amount charged for labor or services in installing or applying the property sold; the sales tax itself; the federal manufacturers' excise upon the sale of new motor vehicles; and charges, if separately stated, for transportation after the sale is made.

Since the "sales price" includes any amount for which credit is given to the purchaser by the vendor, the tax upon any credit sale must be paid over by the vendor to the Commonwealth for the month in which the sale occurs, rather than in the month that the sales price is actually collected from the purchaser. If the vendor pays the tax upon a credit sale and is later unable to collect from the purchaser, there is no provision for a bad debt adjustment. If the vendor chooses to extend credit to the purchaser at the time of sale without requiring reimbursement, then the risk of loss should be upon the vendor and not the Commonwealth.

<sup>4</sup> Id. subsec. 1(26), (26A). Subsection 1(26A) was inserted by Acts of 1966, c. 720, and is effective as of December 8, 1966.

<sup>5</sup> Acts of 1966, c. 14, §1, subsec. 1(14).

<sup>6</sup> Discounts given for early or prompt payment have been ruled not to be excludable.

**§22.5. Exempt purchasers, goods and transactions.** There are three general types of exemption under the sales and use tax law. Certain purchasers are exempt on everything they buy; certain goods are exempt to everyone who buys them; and some goods are exempt because of the type of transaction that is involved.

In the first category, the exempt purchasers are governmental agencies and charitable organizations. All sales to the United States, the Commonwealth of Massachusetts or any political subdivision thereof, or their respective agencies are exempt.<sup>1</sup> But sales to any of the other states, or to their subdivisions or agencies, or to any foreign country are taxable. Similarly exempt are sales to any "corporation, foundation, organization or institution organized exclusively for religious, scientific, charitable or educational purposes, including hospitals," so long as no part of the net earnings of any of these entities inures to the benefit of any private shareholder or individual.<sup>2</sup> In order to qualify for exemption, the property must be used in the conduct of the organization's religious, charitable, educational or scientific purposes; the organization must obtain a certificate of exemption from the Commissioner of Corporations and Taxation; and the vendor must keep separate records with respect to such sales. The statute limits educational purposes to an educational institution having a regular faculty and curriculum with students in attendance.

In addition to the exemption of direct purchases by governmental agencies and exempt organizations, sales of building materials and supplies are also exempt if they are to be used in the "construction, alteration, remodeling or repair of" any building or structure owned by or held in trust for the benefit of (1) any governmental agency using the building or structure exclusively for public purposes, or (2) any exempt organization using the building or structure exclusively in the conduct of its religious, scientific, charitable, or educational purposes.<sup>3</sup> This exemption applies only to building materials and supplies which become physically incorporated in or become a permanent part of the projects being performed under the construction contract and does not include property not permanently affixed to the realty, such as furniture, equipment, and other furnishings.<sup>4</sup> Motor vehicles, machinery, tools and equipment and other supplies used in connection with the projects are subject to tax.<sup>5</sup> With respect to governmental agencies, the word "structure" has been interpreted to include public highways, bridges, or other public works.<sup>6</sup> This liberal interpretation has not been extended to exempt organizations.

The second category of exemption relates to items of tangible personal property that are exempt to everyone. The two major items are

§22.5. <sup>1</sup> Acts of 1966, c. 14, §1, subsec. 6(d).

<sup>2</sup> Id. subsec. 6(e).

<sup>3</sup> Id. subsec. 6(f).

<sup>4</sup> Sales and Use Tax Emergency Regulation No. 12, par. 6.

<sup>5</sup> Id. Nos. 7, 12 par. 5.

<sup>6</sup> Id. No. 2, par. 2. Cf. Acts of 1966, c. 14, §1, subsec. 6(v).

food and clothing. All sales of food products for human consumption are exempt. This includes ice cream, soft drinks, candy and confectionery, and ice when used for household consumption. Meals intended for consumption on or off the premises where sold, whether or not such meals are taxable under the meal excise law, are also exempt.<sup>7</sup> Food for non-human consumption, such as pet food, is subject to tax. Sales of articles of clothing, including footwear, intended to be worn or carried on or about the human body are also exempt.<sup>8</sup> Items worn or carried about the body, but which do not constitute clothing, such as jewelry, umbrellas, purses, and other accessories, are subject to tax. Shoes, uniforms, and other apparel designed to provide special protection, support, traction, or identification in the performance of athletic activity are classified as sporting equipment and, therefore, taxable.

Another large area of exempt goods are those that are already taxed under selective excises. This would include gasoline and other motor fuels, cigarettes, alcoholic beverages, and meals.<sup>9</sup> Cigars and tobacco, which do not come within the scope of the cigarette excise, are, however, subject to the sales tax. Similarly, gasoline upon which the excise is refundable because of non-highway use is also subject to the sales tax.

In the medical area, the exemption from the sales and use tax extends to prescription medicine; oxygen; blood or blood plasma; artificial devices "individually designed, constructed or altered solely for the use of a particular crippled person so as to become a brace, support, supplement, correction or substitute for the bodily structure, including the extremities of the individual;" artificial limbs and eyes, hearing aids and other equipment worn as a correction or substitute for any functioning portion of the body; false teeth sold by a dentist and materials used by a dentist in dental treatment; prescription eyeglasses; and crutches and wheelchairs for the use of invalids and crippled persons.<sup>10</sup> Motor vehicles purchased by and especially equipped for the use of a paraplegic are also exempt.<sup>11</sup> Patent medicines and other non-prescription drugs, medical supplies, and equipment and materials used by a physician, other than prescription medicines, are subject to tax.

Other exemptions include the sale, furnishing or service of gas, water, electricity, and telephone and telegraph; the sale of oil, coal, wood, charcoal, or any other fuel that is used for heating purposes is also exempt.<sup>12</sup> Newspapers, magazines, books used for religious worship, books required for instructional purposes in educational institutions, and publications of any exempt organization are exempt.<sup>13</sup> In

<sup>7</sup> Id. subsec. 6(h).

<sup>8</sup> Id. subsec. 6(k).

<sup>9</sup> Id. subsec. 6(g).

<sup>10</sup> Id. subsec. 6(l).

<sup>11</sup> Id. subsec. 6(u).

<sup>12</sup> Id. subsecs. 6(i), (j).

<sup>13</sup> Id. subsec. 6(m).

order to qualify for the school book exemption, the purchaser must give the vendor a certificate signed by an authorized official of the school, certifying that the book being purchased is required for instructional purposes.<sup>14</sup> Sales of coffins, caskets, burial liners, burial garments, or other materials which are ordinarily sold by a funeral director as part of the business of funeral directing are also exempt.<sup>15</sup> Goods sold through coin operated vending machines at ten cents or less are not subject to tax if the retailer is primarily engaged in making such sales and keeps adequate records.<sup>16</sup>

In addition to these exemptions applicable primarily to purchases by the general public, a number of other exemptions apply to those engaged in industrial, commercial or agricultural enterprises. The principal exemptions in this area are for sales of (a) materials, tools, and fuel which become an ingredient or component part of tangible personal property to be sold, and for sales of (b) materials, tools, and fuel consumed and used directly in, and machinery used directly in specified activities, including generally (1) agricultural production, including the raising of poultry and livestock; (2) commercial fishing; (3) an industrial plant in the manufacture, conversion, or processing of tangible personal property, including the publishing of a newspaper; (4) the operation of commercial radio broadcasting or television transmission; (5) the furnishing of power to an industrial manufacturing plant; and (6) the furnishing of gas, water, steam, or electricity when delivered to consumers through mains, lines, or pipes.<sup>17</sup> Fuel used in the operation of aircraft, and used in vessels engaged in foreign and interstate commerce, as well as repairs and supplies for such vessels, are also not subject to tax. Other business exemptions are the sale of motion picture films for commercial exhibition and the sale by their builders of vessels or barges of 50-ton burden or over, constructed in Massachusetts.<sup>18</sup>

The sale of containers to persons who will use them in selling their product are exempt to such persons if the container is not required to be returned for re-use. Sales of containers that are to be used for goods that are themselves non-taxable are also not taxed. Containers which must be returned by the buyer of the contents for re-use are taxable at the time of the purchase by the person who will use them for selling the contents thereof. Such containers, however, are exempt from tax when sold to the consumer with the contents or when resold for re-filling.<sup>19</sup> The container exemption has been interpreted to include all types of material used for packaging goods intended to be sold, including twine, tape, wire, packing material, bags, wrapping paper, and

<sup>14</sup> Sales and Use Tax Emergency Regulation No. 8.

<sup>15</sup> Acts of 1966, c. 14, §1, subsec. 6(n).

<sup>16</sup> Id. subsec. 6(t).

<sup>17</sup> Id. subsecs. 6(r), (s). The texts of these paragraphs should be examined closely to ensure that the rather technical limitations are complied with.

<sup>18</sup> Id. subsecs. 6(j), (m), (o).

<sup>19</sup> Id. subsec. 6(q).

trays. The statute specifically includes as exempt bags in which feed for livestock and poultry is customarily contained.

With respect to agricultural enterprises, the sale of the following are exempt: (1) livestock and poultry of a kind which ordinarily constitute food for human consumption; (2) feed for such livestock and poultry; (3) fertilizer, insecticides, fungicides, seed inoculants and disinfectants, plant hormones and similar products; and (4) plants suitable for planting to produce food for human consumption or such plants when they or their produce are to be sold in the regular course of business.<sup>20</sup>

The third category of exemptions is the sale of goods which are exempt by reason of the nature of the transaction in which they are sold. Property which is sold to a person who is going to resell it in the regular course of business is exempt in all cases since the sales tax is imposed only upon the sale at retail to the final consumer of the product. Since the statute presumes all sales to be taxable, the vendor of goods for resale, in the exercise of good faith, must obtain from the purchaser a resale certificate in which the latter certifies that the goods purchased are for resale and not for his own use.<sup>21</sup> When goods are sold in Massachusetts and the seller is required to deliver them to the purchaser outside the state or to an interstate carrier for delivery to a purchaser outside the state, the sale is an interstate sale and, therefore, exempt under statutory provisions and under the Commerce Clause of the United States Constitution.<sup>22</sup> Lastly, casual and isolated sales by one who is not regularly engaged in the business of making sales at retail are not taxable.<sup>23</sup> However, a casual or isolated sale of a motor vehicle or trailer to one who is not the spouse, parent, brother, sister, or child of the seller subjects the purchaser to liability under the use tax provisions.<sup>24</sup>

**§22.6. Administrative provisions.** No person may engage in the business of selling in the Commonwealth tangible personal property subject to the tax, unless he registers each place at which he conducts business. The certificate of registration may be denied, suspended, or revoked for failure to comply with the sales and use tax statute, rules, and regulations. Appropriate appeal procedures relative to any denial, suspension, or revocation are provided. Doing business without registration subjects a person to a fine and possible restraint on doing business as a vendor in the Commonwealth.<sup>1</sup>

The registered vendor, against whom the sales tax is levied, must collect from the purchaser reimbursement for the tax; the amount of the tax collected must be stated and charged separately from the sales price; and the amount must be shown separately on any invoice or

<sup>20</sup> Id. subsec. 6(p).

<sup>21</sup> Id. subsecs. 1(13), 8; Sales and Use Tax Emergency Tax Regulation No. 5.

<sup>22</sup> Acts of 1966, c. 14, §1, subsecs. 6(a), (b).

<sup>23</sup> Id. subsec. 6(c); Sales and Use Tax Emergency Regulation No. 4.

<sup>24</sup> Acts of 1966, c. 14, §2, subsec. 5(b).

§22.6. <sup>1</sup> Acts of 1966, c. 14, §1, subsec. 7.



record of the sale.<sup>2</sup> The amount collected is three cents on each full dollar and an amount on each part of a dollar in accordance with a statutory formula. The tax becomes a debt from the purchaser to the vendor and is recoverable at law in the same manner as other debts.<sup>3</sup> Commencing November 6, 1966, the sales or use tax imposed on motor vehicles and trailers is required to be paid by the purchaser to the Registrar of Motor Vehicles. The vendor of the motor vehicle or trailer no longer has to collect the tax but is required to complete a sworn statement of sale in order that the amount of tax may be determined.<sup>4</sup>

The vendor must file a return for each calendar month on or before the twentieth day of the following month and pay over to the Commissioner three per cent of the amount of his taxable sales. This amount may be somewhat less than the amount actually collected by the vendor since under the statutory formula for parts of a dollar, the amount collected is slightly more than three per cent. The vendor is also allowed as compensation for collecting and remitting the tax two per cent of the taxes otherwise owed by him, provided he has complied with the statute, rules, and regulations. The State Tax Commission may by regulation authorize quarterly returns.<sup>5</sup>

The Commissioner has three years after the filing of the return or its due date, whichever is later, within which to assess a deficiency after a prior 30-day notice to the vendor. There is no limitation upon the right of the Commissioner to assess a deficiency when there is either no return or a false or fraudulent return made with intent to evade the tax.<sup>6</sup> He is also authorized to refund any over-payment or to credit it against any other amounts owed.

Unpaid taxes bear interest at one half of one per cent per month, assessed for each month or major fraction thereof. Late returns are subject to a penalty of one half of one per cent of the tax ultimately determined to be owing for each month, or major fraction thereof, during which the vendor is in default. The penalty, however, will in no event be less than ten dollars. In addition, the Commissioner, if he believes collection of the tax is in jeopardy, may immediately assess the amount owed.<sup>7</sup>

An application for abatement may be filed with the Commission within three years from the due date of the return. If the Commissioner assesses a deficiency, an application for abatement may be filed with the Commission within two years after the date upon which the notice of assessment is sent. When an abatement has been allowed, no refund will be made to a vendor who has collected reimbursement until he first establishes to the satisfaction of the Commission that he

<sup>2</sup> *Id.* §1, subsecs. 3-5.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Id.* subsec. 3, as amended by Acts of 1966, c. 483.

<sup>5</sup> Acts of 1966, c. 14, §1, subsecs. 2, 9, 10, 14.

<sup>6</sup> *Id.* subsec. 15.

<sup>7</sup> *Id.* subsecs. 18, 19.

has repaid this amount to the purchaser. No abatement can be allowed unless every required return is filed at or before the time that the application for abatement is filed. Appeals from the Commission's decision may be taken to the Appellate Tax Board and, thereafter, to the Supreme Judicial Court.<sup>8</sup>

**§22.7. Use tax.** In order to block wholesale avoidance of the sales tax through the purchase of goods out of state, the Massachusetts sales tax statute, similar to those in all other sales tax states, is supplemented by a use tax law. A three per cent use tax is imposed upon the storage, use, or other consumption in the Commonwealth of tangible personal property purchased from any vendor, whether or not engaged in business in Massachusetts, for storage, use, or other consumption in this state. If the vendor is engaged in business in the Commonwealth or is authorized by the Commissioner, he must collect the use tax, giving a receipt therefor to the purchaser. Unless the purchaser has in this way paid the use tax and has a receipt therefor, he is liable to pay the use tax directly to the Commonwealth.<sup>1</sup>

The use tax overlaps the sales tax in the type of transactions to which it is applicable. However, exemptions from the use tax are provided for sales which are taxable or exempt under the Massachusetts sales tax provisions and for sales upon which the purchaser has paid a tax or made reimbursement therefor to a vendor under the laws of any other state. The purchase of motor vehicles and trailers in casual and isolated transactions is specifically made subject to the use tax, unless the purchaser is the spouse, parent, brother, sister, or child of the seller.<sup>2</sup>

The administrative provisions applicable to the use tax are substantially the same as those provided for the sales tax, except that no compensation is paid to a vendor for collecting the use tax.<sup>3</sup> The statute establishes a presumption that tangible personal property shipped or brought into Massachusetts by the purchaser within six months of its purchase was purchased for storage, use, or other consumption in the Commonwealth.<sup>4</sup> It would appear, however, that this presumption is one that may be rebutted by the purchaser, even if the property is brought into the Commonwealth within the six-month period. Under the statute it seems clear that the Commissioner is not bound by a presumption that the tax is not assessable against property that comes into the Commonwealth more than six months after purchase, if the basis for the tax otherwise exists.

### C. PERSONAL INCOME TAX

**§22.8. Legislative changes.** As part of the sales tax package enacted in 1966, two personal income tax amendments were adopted in order

<sup>8</sup> Id. subsecs. 20-22.

<sup>1</sup> Acts of 1966, c. 14, §2, subsecs. 2-4.

<sup>2</sup> Id. subsec. 5.

<sup>3</sup> Id. subsecs. 6-14.

<sup>4</sup> Id. subsec. 6(f).

to lessen the impact of the sales tax on lower and limited income groups. Every taxpayer who is a legal resident of Massachusetts for at least six months, who is not a dependent of another taxpayer, and whose taxable income, together with the taxable income of his spouse, does not exceed \$5000 is entitled to an income tax credit of \$4 for himself, \$4 for his spouse and \$8 for each dependent.<sup>1</sup> A married person must file a joint return with his spouse in order to be entitled to the credit. If the taxpayer's tax liability is less than the amount of the credit, he is entitled to a refund of the difference between his tax and credit. A person having no taxable income will file a return in order to get a refund of the credit amount. The credit must be claimed on a timely filed return, on or before April 15 or the fifteenth day of the fourth month following the close of the taxable year, or within any extension of time that has been granted. Therefore, late returns or late applications for credit will have to be disallowed.

The other personal income tax change incorporated in the sales tax package provides for an additional \$500 exemption against business income for taxpayers who are 65 years of age or over by the close of the taxable year.<sup>2</sup> On joint returns, this additional exemption is allowable only to the extent of the excess of each spouse's business income over \$2000, or of \$500, whichever is less. Therefore, assuming both spouses qualify for the exemption, the unused portion of the exemption allowable to one spouse cannot be applied against the business income of the other.

Other amendments to the income tax law allow exemptions for governmental pensions of other states and for servicemen in combat areas. Pensions paid by any other state, or a political subdivision thereof, to a Massachusetts resident are exempt from tax, provided that similar pensions paid under the laws of the Commonwealth are not subject to tax in such other state or political subdivision.<sup>3</sup> An additional exemption of \$2000 against business income is now allowable to every taxpayer who served, at any time during the taxable year, as a member of the armed forces of the United States on active service in an area which the President of the United States has by executive order designated as a combat zone. At the present time, North and South Vietnam and 100 miles of its adjacent waters are designated as a combat zone. If both spouses have so served, the exemption is increased to \$4000.<sup>4</sup>

§22.8. 1 G.L., c. 62, §6B, added by Acts of 1966, c. 14, §7, as amended by Acts of 1966, c. 698, §13. Section 6B is effective for taxable years commencing after December 31, 1965.

2 G.L., c. 62, §5(b), as amended by Acts of 1966, c. 14, §§5, 6. This additional exemption is effective for taxable years commencing after December 31, 1965. For taxable years commencing after December 31, 1966, this exemption is incorporated into G.L., c. 62, §5B, as inserted by Acts of 1966, c. 698, §9.

3 G.L., c. 62, §8(g), as amended by Acts of 1966, c. 557, §1. This exemption is effective for taxable years commencing after December 31, 1965.

4 G.L., c. 62, §5(b), as amended by Acts of 1966, c. 559. This additional exemption is effective for taxable years commencing after December 31, 1965. See Acts of 1966, c. 698, §87. For taxable years commencing after December 31, 1966, this exemption is incorporated in Section 5B of G.L., c. 62, as inserted by Acts of 1966, c. 698, §9.

This additional exemption of \$2000 may be applied against any business income received during the taxable year by either spouse. It is not limited to military pay received for service in the combat area; thus the exemption will apply if the serviceman and his spouse, if married, have business income from other sources. In this respect, the exemption differs from the federal income tax provision, which excludes from gross income only the military pay received for military service while serving in the combat zone.<sup>5</sup>

The omnibus tax reform bill contained a number of other personal income tax amendments, all taking effect with respect to taxable years commencing after December 31, 1966. The myriad of basic taxes, additional taxes and surtaxes, both permanent and temporary, were all combined into one permanent rate for each class of income equal to the previous effective rate: 3.075 per cent for business income; 7.38 per cent for interest, dividends, and capital gains; and 1.845 per cent for annuity income.<sup>6</sup> Interest received from national banks was exempted from tax.<sup>7</sup> The income tax imposed upon nonresidents was broadened to include interest, dividends, capital gains, and annuity income from property employed in a business, trade, profession, or occupation carried on in the Commonwealth.<sup>8</sup> The personal exemptions and the deductions for a spouse, dependents and for medical expenses were removed from different sections of the statute and combined into one new Section 5B.<sup>9</sup> The characterization of the latter three categories was changed from "deduction" to "exemption." The new exemption for a dependent who is a member of the household was made similar to that for a dependent child. It is only allowed if the member of the household is less than nineteen years of age, a student, or incapable of self-support because of physical or mental disability.<sup>10</sup> Previously, these limitations did not apply to a dependent member of the household. The last principal change contained in the omnibus reform bill placed the taxation of partnerships on the same basis as their taxation under federal law.<sup>11</sup> Partners will report and pay income taxes on their distributive shares of partnership income with the partnership filing only an information return. Formerly, partnership income was taxed to the partnership on a separate partnership income tax return.

<sup>5</sup> Int. Rev. Code of 1954, §112.

<sup>6</sup> Acts of 1966, c. 698, §§2, 3, 5-8. The last extension of the temporary taxes for the 1966-1967 fiscal period was adopted in Acts of 1965, c. 542. All temporary taxes were made permanent by Chapter 698. As a result, Chapter 542 and the permanent additional taxes and surtaxes were repealed and replaced by a number of transitional statutes to take care of the tax periods prior to the effective date of the permanent rates. Acts of 1966, c. 698, §§74-84.

<sup>7</sup> G.L., c. 62, §1, as amended by Acts of 1966, c. 698, § 2A.

<sup>8</sup> G.L., c. 62, §5A, as amended by Acts of 1966, c. 698, §8.

<sup>9</sup> G.L., c. 62, §5B, as inserted by Acts of 1966, c. 698, §9. Old provisions in G.L., c. 62, §§5(b), 6(h), (i), were repealed by Acts of 1966, c. 698, §§6, 11, 12.

<sup>10</sup> G.L., c. 62, §5B(4)(ii), as inserted by Acts of 1966, c. 698, §9.

<sup>11</sup> G.L., c. 62, §§17-21, as amended by Acts of 1966, c. 698, §18.

**§22.9. Executor's liability for unpaid taxes.** The Commissioner may recover from the executor or administrator of a decedent taxes with respect to income received by the decedent during his life, even if the action is commenced after the one-year statute of limitations applicable to creditors<sup>1</sup> has run. The Supreme Judicial Court, in *Levin v. Commissioner of Corporations and Taxation*,<sup>2</sup> held that the administrative provisions of General Laws, Chapter 62, indicate a legislative intention that there shall be some form of liability for these income taxes if they are assessed within the three-year assessment period. It thus determined that, under General Laws, Chapter 60, Section 36, the personal representative of the estate is personally liable for such assessed taxes to the extent that at or after the time the Commissioner makes demand upon him for payment thereof, he has had in his possession funds of the estate applicable to its payment and sufficient to pay the same and has not paid it. The executor may be allowed in his account for any payment which he is thus required to make individually. It would appear that the "demand" required by the Court would be a statutory demand under General Laws, Chapter 60, Section 16. A notice of assessment, which had been given to the executors in the *Levin* case, would not be sufficient.

**§22.10. Tax-free exchange of securities.** In *Ayers v. State Tax Commission*,<sup>1</sup> a case which has only historical significance under the current provisions of the income tax law, the Court held that the merger of the Great Atlantic & Pacific Tea Company, a New York holding corporation, into its operational subsidiary, the Great Atlantic & Pacific Tea Company, a Maryland corporation, did not result in any taxable gain to a holder of common stock in the Maryland corporation. Although the three classes of stock of the Maryland corporation — voting common, nonvoting common, and preferred — were converted into voting common at different exchange rates, the Court found that a holder of the old nonvoting common stock who exchanged his stock for new voting common stock retained substantially the same interest in the same assets as before and, therefore, should not be subject to income tax. The Court may, to some degree, have been influenced in its decision by the fact that this merger took place just nineteen days before the effective date of the amendment which made tax free the exchanges of securities in various reorganizations, including the one here involved, to the same extent as under the federal income tax law.<sup>2</sup>

**§22.11. Revocable trust: Offset of losses.** The income of a non-Massachusetts revocable trust has been held to be constructively received by the Massachusetts settlor-beneficiary even though it has not in fact been distributed to him.<sup>1</sup> The trustees of a Massachusetts

§22.9. 1 G.L., c. 197, §9.

2 349 Mass. 20, 206 N.E.2d 69, noted in 1965 Ann. Surv. Mass. Law §4.1.

§22.10. 1 349 Mass. 132, 207 N.E.2d 294.

2 G.L., c. 62, §5(c), as amended by Acts of 1959, c. 556, §2.

§22.11. 1 *Dewey v. State Tax Commission*, 346 Mass. 43, 190 N.E.2d 203 (1963),

revocable trust, in *Dexter v. State Tax Commission*,<sup>2</sup> attempted to apply the capital losses sustained individually by the settlor-beneficiary from sales of securities against the capital gains realized in the same tax year from sales of securities by the trustees. The Court, in refusing to allow such an offset, held that resident trusts, unlike nonresident trusts, are specifically subject to tax under the personal income tax law which clearly imposes the tax upon the trustee and not upon the beneficiary for taxable income received by the trust. The statute provides for no offset, either to the trust or to the beneficiary, with respect to capital gains and losses of the other.

**§22.12. Corporation as partner: Exemption.** When a foreign corporation doing business in Massachusetts is also a member of a partnership doing business in this state, the corporation's share of the partnership's income is taxable to the corporation under the net income measure of the business corporation excise. Such share of the partnership income is exempt on the partnership's income tax return. The Court in *Vance, Sanders & Co. v. State Tax Commission*<sup>1</sup> refused to sustain the Commission's contention that the corporation's share of the partnership income was taxable to both the corporation and the partnership; it found that the provisions of General Laws, Chapter 62, Sections 8 and 18, explicitly provide for an exemption to the partnership under the personal income tax law in such a case.<sup>2</sup>

**§22.13. "Section 2503 trusts."** In the taxation of resident trust income, income accumulated for unborn or unascertained persons, or persons with uncertain interests, is taxed as if accumulated for the benefit of a known inhabitant of the Commonwealth. However, this provision does not apply to a remainder presently vested in a person or persons in being not subject to divestment by the happening of any contingency expressly mentioned in the trust instrument.<sup>1</sup> *State Tax Commission v. Loring*<sup>2</sup> involved a trust created pursuant to the provisions of Section 2503(c) of the United States Internal Revenue Code of 1954, allowing gifts to such a trust to qualify for the annual \$3000 gift tax exclusion. The Supreme Judicial Court held that the interest of the beneficiary was vested and not subject to divestment upon a contingency mentioned in the trust instrument. Therefore, the income accumulated for a beneficiary who was not a Massachusetts resident was not subject to tax. If the beneficiary is a Massachusetts resident, as

---

noted in 1963 Ann. Surv. Mass. Law, §17.5; *State Tax Commission v. Fitts*, 340 Mass. 575, 165 N.E.2d 586 (1960), noted in 1960 Ann. Surv. Mass. Law §17.5.

<sup>2</sup> 350 Mass. 380, 215 N.E.2d 94 (1966).

§22.12. <sup>1</sup> 350 Mass. 536, 215 N.E.2d 890 (1966).

<sup>2</sup> Under the change in partnership taxation enacted by Acts of 1966, c. 698, §18, the problem presented by this case would no longer exist. In all cases, the distributive share of each partner would be taxed in his individual or corporate tax return, as the case may be.

§22.13. <sup>1</sup> G.L., c. 62, §10.

<sup>2</sup> 1966 Mass. Adv. Sh. 607, 215 N.E.2d 751.

in *State Tax Commission v. Burr*<sup>3</sup> the trustee is entitled to claim the \$2000 exemption granted by Section 8(a) of General Laws, Chapter 62.

Under these so-called "Section 2503 trusts," the trust is created for the period of minority of the beneficiary. The trustee in his discretion may expend for the benefit of the minor both income and principal, with any unexpended income to be accumulated. The trustee pays the balance of the principal and accumulated income to the minor at age 21. If the beneficiary dies before reaching 21, the principal and income is paid to the beneficiary's estate or as he may appoint under a general testamentary power of appointment. The Supreme Judicial Court held that this type of trust gives the beneficiary as complete a vested beneficial interest as is consistent with the existence of a trust; the power of appointment, rather than making the interest uncertain, as the Commission contended, tends to augment the beneficiary's interest and to make it more complete by removing any doubt concerning the beneficiary's power to dispose of it by will.

#### D. CORPORATION TAX

**§22.14. Legislative changes.** In the corporate tax area, the 1966 SURVEY year saw the adoption of a number of significant statutory amendments. As part of the sales tax package, the excise imposed upon national banks and trust companies was raised to a maximum rate of ten per cent from its previous level of eight per cent and this maximum was made permanent.<sup>1</sup> In the same statute, the excise imposed upon savings banks was completely revised and was expanded to include cooperative banks and savings and loan associations, which were previously not taxed.<sup>2</sup> Under the old law, savings banks paid a semi-annual excise of one quarter of one per cent of their savings deposits, but deducting deposits invested in 28 different types of property or securities. The new excise upon each savings bank, cooperative bank and savings and loan association imposes a semi-annual excise equal to one half of one per cent of its estimated net operating income and one twentieth of one per cent of the average amount of its deposits or of its savings accounts and share capital. The exemptions in computing the deposits measure is limited to real estate used for banking purposes; unpaid balances on mortgage loans on real estate taxable in Massachusetts or situated in a state contiguous to Massachusetts and within 50 miles of the bank's main office; and, for banks not previously subject to this tax, all unpaid balances on out-of-state mortgage loans in existence as of March 1, 1966.

<sup>3</sup> 1966 Mass. Adv. Sh. 613, 215 N.E.2d 755.

§22.14. <sup>1</sup> G.L., c. 63, §2, as amended by Acts of 1966, c. 14, §9, effective for taxable years ending on or after December 31, 1966. The rate was made permanent by id. §§16, 17.

<sup>2</sup> G.L., c. 63, §§11-13, as amended by Acts of 1966, c. 14, §§11-13, effective as to the first taxable year, for the number of months, or major fraction thereof, after March 2, 1966, in such taxable year.

The sales tax package also enacted a new Chapter 63C of the General Laws, imposing an income tax upon domestic and foreign corporations which are engaged exclusively in interstate commerce. These corporations have been exempt, under the Commerce Clause of the United States Constitution, from the privilege tax levied upon foreign corporations doing business in this state.<sup>3</sup> The net income derived from the business of the corporation carried on within Massachusetts is taxed to such corporations at 3.075 per cent, the rate that is levied on business income received by individuals. The Massachusetts income of such corporations is determined under the statutory apportionment formula used by corporations subject to tax under General Laws, Chapter 63. The administrative provisions applicable to domestic business corporations under Chapters 63 and 63B of the General Laws, are made applicable to this tax.<sup>4</sup>

The last corporate amendment enacted with the sales tax expanded the definition of foreign corporations subject to the regular business corporation excise to include therein foreign corporations renting real estate or tangible personal property in Massachusetts.<sup>5</sup>

The most extensive changes in corporate taxation, especially for the business and manufacturing corporations, were made under the omnibus reform bill. These amendments are effective for taxable years ending on and after December 31, 1966. All the temporary and permanent additional taxes and surtaxes were combined into permanent rates. The casualty insurance excise was made permanent at two per cent.<sup>6</sup> The business and manufacturing corporations excise was fixed at \$6.15 per thousand for the property measures and 6.765 per cent of Massachusetts net income, with a \$100 minimum; the gross receipts measure was eliminated.<sup>7</sup> The excise upon utility corporations was rounded out and made permanent at five per cent of net income instead of the previously effective rate of 4.92 per cent.<sup>8</sup> Finally, the excise upon clubs serving alcoholic beverages was pegged at 0.5 per cent of gross receipts, replacing prior rate of 0.3075 per cent.<sup>9</sup>

The taxation of security corporations was entirely revised. Regulated investment or bank holding companies, as defined under the United States Internal Revenue Code, are subject to a Massachusetts excise of

<sup>3</sup> G.L., c. 63C, as inserted by Acts of 1966, c. 14, §21, effective for taxable years ending on or after April 30, 1966. With respect to taxable years commencing prior to April 1, 1966, the tax is apportioned in accordance with the number of calendar months in the taxable year commencing with April, 1966.

<sup>4</sup> The estimated tax requirements of G.L., c. 63B, were made applicable to G.L., c. 63C, under Acts of 1966, c. 698, §72, and apply to taxable years ending on or after December 31, 1966.

<sup>5</sup> G.L., c. 63, §§30(2) and 39, as amended by Acts of 1966, c. 14, §§18 and 19 respectively and effective for the same periods as the interstate corporation tax. See note 3 *supra*.

<sup>6</sup> G.L., c. 63, §22, as amended by Acts of 1966, c. 698, §45.

<sup>7</sup> G.L., c. 63, §§32 and 39, as amended by Acts of 1966, c. 698, §§53 and 61 respectively.

<sup>8</sup> G.L., c. 63, §52A(2), as amended by Acts of 1966, c. 698, §68.

<sup>9</sup> G.L., c. 63A, §2, as amended by Acts of 1966, c. 698, §70.



one fourth of one per cent of gross income, with a \$100 minimum. Other security corporations are subject to a Massachusetts excise of 1 per cent of gross income, with a \$100 minimum.<sup>10</sup> The Commissioner no longer has the right to lower this statutory rate.<sup>11</sup>

The most extensive change revamped the net income measure of the business and manufacturing corporation excise. For the first time, "gross income" has been defined to equal gross income under the federal tax law, plus the interest from state and municipal securities. "Net income" has been defined as gross income less the deductions (but not credits) allowable under the United States Internal Revenue Code, except that deductions are disallowed for dividends received, carryover losses, and specified corporation taxes imposed by any state.<sup>12</sup>

The statutory three-factor formula for apportioning income to Massachusetts for multi-state corporations has been entirely revised. Whereas the old formula specifically allocated interest, dividends, and capital gains either to Massachusetts or outside Massachusetts, the new formula provides for no separate allocation between investment and operating income. All income, if not exempt, is apportioned under the three-factor formula. Unlike the old provisions, the new amendments also treat domestic and foreign corporations alike.

Under the new apportionment rules, dividends are not taxable. Interest and gains from the sale of tangibles and short-term gains from intangibles are included in full in apportionable income. Long-term gains from the sale of intangibles are included at 50 per cent of the amount reportable to the Federal Government with pre-1963 gains of this type exempt entirely from tax.<sup>13</sup> A corporation is permitted to apportion its net income under the three-factor formula and allocate only a portion of it to Massachusetts if it has income from business activity which is taxable in another state. A corporation is taxable in another state if (1) it is subject to a net income, franchise, or corporate stock tax in such state, or (2) that state has the jurisdiction to levy an income tax on such corporation regardless of whether, in fact, such state does so.<sup>14</sup>

The three-factor formula, while still based on property, payroll, and sales, has been significantly changed. The property factor now includes real and tangible personal property leased as well as owned by the corporation. Property owned by the corporation is valued at its federal adjusted basis, and leased property is valued at eight times its net annual rental.<sup>15</sup> The payroll factor follows the same rules as are

<sup>10</sup> G.L., c. 63, §38B, as amend by Acts of 1966, c. 698, §60.

<sup>11</sup> G.L., c. 63, §56A, repealed by Acts of 1966, c. 698, §69.

<sup>12</sup> G.L., c. 63, §30(5), as amended by Acts of 1966, c. 698, §46. Massachusetts corporation taxes are deductible in full against Massachusetts net income under provisions of G.L., c. 63, §§38A, 42A, as amended by Acts of 1966, c. 698, §§59, 65. "State" is defined so as to include subdivisions thereof and foreign countries. G.L., c. 63, §30(13).

<sup>13</sup> G.L., c. 63, §38(a), as inserted by Acts of 1966, c. 698, §58.

<sup>14</sup> G.L., c. 63, §38(b), (c).

<sup>15</sup> *Id.* §38(d).

used for unemployment compensation purposes. Compensation is considered paid in Massachusetts if (1) the employee's service is performed entirely in Massachusetts; (2) the service performed outside Massachusetts is incidental to the Massachusetts services; or (3) some of the services are performed in Massachusetts and (i) the base of operations or, in its absence, the place from which the services are directed or controlled is in Massachusetts, or (ii) if the base of operations or the place from which the services are directed or controlled is not in any state in which some part of the services are performed, but the employee's residence is in Massachusetts.<sup>16</sup> The sales factor includes all gross receipts except those from the maturity, redemption, sale, exchange, or other disposition of securities. Sales of tangible personal property are considered to be Massachusetts sales if (1) the property is delivered to a purchaser in Massachusetts; or (2) the property is sold by a Massachusetts sales office and shipped from a Massachusetts location and the corporation is not taxable in the state of the purchaser. Sales of real estate and intangible personal property are considered to be Massachusetts sales if the income-producing activity is performed wholly or in a greater proportion in Massachusetts.<sup>17</sup>

As part of an extensive program to control and abate water pollution, a tax incentive under the business corporation excise was enacted.<sup>18</sup> Any corporation constructing an industrial waste treatment facility in Massachusetts between January 1, 1967, and January 1, 1974, may, at its election, deduct from its Massachusetts net income the entire cost of such facility in the year in which it is paid or incurred. This facility would also be exempt from the tangible property measure of the excise.

The last statutory change in the corporation area involves the life insurance excise. Funds or other property accepted by a domestic life insurance company under an agreement for accumulation to provide annuities at a future date may, for purposes of the excise and at the election of the company, be taxed as premiums received either in the year they are accepted or in the year they are applied to provide annuities.<sup>19</sup> Formerly, an excise was paid on these amounts in the year they were accepted rather than in the year they were applied to provide annuities.

**§22.15. Allocation of net income.** Two of the three corporate tax cases decided during the 1966 SURVEY year dealt with the allocation of net income under the business and manufacturing corporation excise with respect to domestic corporations doing business in several states. In *Smith Meal Co. v. State Tax Commission*<sup>1</sup> the corporation had "net

<sup>16</sup> Id. §38(e).

<sup>17</sup> Id. §38(f).

<sup>18</sup> Id. §38D, as inserted by Acts of 1966, c. 701.

<sup>19</sup> G.L., c. 63, §20, as amended by Acts of 1966, c. 596, §1, and effective for 1966 and thereafter.

§22.15. 1 350 Mass. 509, 215 N.E.2d 642 (1966).

income" of \$35,910.67, which was computed in part from \$51,105.91 in interest, \$5160.25 in capital gain from the sale of property situated outside of Massachusetts, and \$21,335.49 in net operating loss. Since the apportionment percentage derived from the three-factor formula apportioned none of the remainder net income to Massachusetts (the corporation had no property, payroll or sales in this state), the Commissioner allocated none of the operating loss to Massachusetts. He taxed under the net income measure the only class of income specifically allocated to Massachusetts under the statute, the interest income of \$51,105.91.<sup>2</sup> The Supreme Judicial Court held that the income allocable to Massachusetts cannot exceed its total corporate net income and that the deductions allowable should be allocated among the various classes of gross income. The Court found reasonable the corporation's method of apportioning its total net income to Massachusetts by the same proportion that its gross income is allocated to this state, resulting in a net income measure of \$32,617.25.<sup>3</sup>

In *Cabot Corp. v. State Tax Commission*<sup>4</sup> the corporation had a total net income of \$48,169.03, comprised of \$178,042.23 in interest and a net operating loss of \$129,873.20. The apportionment percentage derived from the three-factor formula again apportioned none of the remainder net income to Massachusetts; therefore, the Commissioner allocated none of the operating loss to Massachusetts. He taxed under the net income measure the only item specifically allocated to this state, the interest income of \$178,042.23, rather than the \$48,169.03 contended by the corporation. The Court again sustained the taxpayer and held that the net income measure cannot exceed the corporation's total net income. The Court further intimated that Cabot Corporation could have properly argued for a lower amount by allocating a proportionate amount of the allowable deductions against its interest income.

Under the Court's decisions, the Commonwealth must bear its share of operating losses sustained by corporations in other states even though none of its operational activities are located here. In both the *Smith Meal* and *Cabot* cases, if the corporations' operational activities were profitable, Massachusetts would not get a single dollar of those profits. If Massachusetts cannot share in operational gains, it should not have to bear any part of the operational losses. Moreover, the rule laid down by the Court that any allowable deductions can be applied against investment gross income to arrive at investment net income cannot stand close scrutiny. Thus, for example, if Cabot ran a widget factory in California at a loss, there is no justification in contending that the salaries paid to the factory workers and the depreciation for widget machinery are proper deductions from gross dividends received on investments in Massachusetts, when Cabot computes its net divi-

<sup>2</sup> G.L., c. 63, §§37, 38.

<sup>3</sup> This is computed by multiplying the fraction of \$51,105.91 over \$56,266.16 times the net income of \$35,910.67.

<sup>4</sup> 1966 Mass. Adv. Sh. 547, 215 N.E.2d 646.

dends. The more reasonable approach is to recognize that remainder net income may be a negative amount, which is then apportioned to Massachusetts and other states under the three-factor formula. Massachusetts should bear its share of operational losses as apportioned by the formula, no more and no less.

Under the new provisions of the net income measure, as amended by Acts of 1966, Chapter 698, these allocation problems are solved to a great extent.<sup>5</sup> There are no specific allocations of classes of income. All taxable net income is apportioned by the three-factor formula. Although problems similar to those in the *Smith Meal* and *Cabot* cases may still arise in a limited number of situations, the new formula should result in apportionments more in accord with the Court's rulings in the vast majority of cases.

§22.16. **Ship and vessel excise.** In the only other case in the corporation tax area, *Shinnecock, Inc. v. State Tax Commission*,<sup>1</sup> the Supreme Judicial Court dealt with the ship and vessel excise.<sup>2</sup> This tax is measured by the corporation's interest in any vessel engaged in interstate or foreign commerce or fishing. The Court held this interest to be the value of the equity in the vessel after taking into account valid mortgages.

## E. OTHER STATE TAXES

§22.17. **Legislative changes.** A number of the existing selective excises were increased during the past two years. The gasoline and special fuels excise was raised from 5.5 to 6.5 cents per gallon in 1965.<sup>1</sup> As part of the sales tax revenue program, the cigarette excise was increased from eight to ten cents per package<sup>2</sup> and the alcoholic beverages excises were also raised approximately 30 per cent in the aggregate.<sup>3</sup>

The cigarette excise was made applicable to any roll of tobacco

<sup>5</sup> The relevant provisions are discussed in §22.14 *supra*, particularly the text supported by notes 12-17.

§22.16. <sup>1</sup> 1966 Mass. Adv. Sh. 707, 216 N.E.2d 98.

<sup>2</sup> G.L., c. 63, §67.

§22.17. <sup>1</sup> G.L., c. 64A, §4; c. 64E, §4; c. 64F, §§ 3, 6, all as amended by Acts of 1965, c. 451, and effective on May 13, 1965.

<sup>2</sup> G.L., c. 64C, §6, as amended by Acts of 1966, c. 14, §22, effective March 3, 1966.

<sup>3</sup> G.L., c. 138, §21, as amended by Acts of 1966, c. 14, §26, effective March 3, 1966. All alcoholic beverage excise rates were made permanent under Acts of 1966, c. 698, §1, and effective after December 31, 1966. The permanent rates are (a) \$2.40 per barrel of malt beverages; (b) 2¢ per wine gallon of cider containing 3-6 per cent alcohol; (c) 40¢ per wine gallon of still wine, including vermouth, other than (b) above; (d) 50¢ per wine gallon of champagne and other sparkling wines; (e) 80¢ per wine gallon of all other alcoholic beverages containing 24 per cent or less of alcohol; (f) \$2.95 per wine gallon of all other alcoholic beverages containing more than 24 per cent but not more than 50 per cent of alcohol; and (g) \$2.95 per proof gallon of all other alcoholic beverages containing more than 50 per cent of alcohol.

wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as cigarettes.<sup>4</sup> This amendment will impose the cigarette excise on so-called "little cigars," which are the size of cigarettes and sold in similar packages.

In an effort to curb the illicit importation and sale of untaxed cigarettes, which appears to be flourishing in Massachusetts since the latest increase of the cigarette tax to ten cents, the payment of the tax will be evidenced by cigarette stamps or meter impressions, beginning January 1, 1967.<sup>5</sup> The decal stamps will be sold and the meters set at selected banks through the Commonwealth, which will act as fiscal agents for the Commissioner. The cigarette excise will be collected by these banks as payment for the decal stamps or the setting of meters. The wholesalers who act as stampers will be compensated at the rate of 2.5 per cent of the payment made, or \$1.50 per case of cigarettes. Vending machine operators and chain store operators acting as stampers will receive 1.25 per cent and 0.625 per cent respectively. Payment for the stamps or meter settings will be made in cash or certified check at the time of purchase, or within 30 days thereof if the stamper has filed a bond or other security with the Commissioner.

The final tax enacted as part of the sales tax revenue program was a room occupancy excise.<sup>6</sup> A five per cent tax is imposed upon the transfer of any room or rooms designed and normally used for sleeping and living purposes in a hotel, motel or lodging house licensed under General Laws, Chapter 140. The excise does not apply to occupancies rented for less than \$2.00 per day; to the portion of an occupancy which extends beyond the first 90 consecutive days; to lodging accommodations at governmental, religious, charitable, educational, or philanthropic institutions; to lodging accommodations at private, religious, or charitable homes for the aged, infirm, indigent, or chronically ill; and to lodging at summer camps for children operated by religious or charitable organizations. The tax is levied on the operators of the non-exempt hotels, motels, and lodging houses. Reimbursement for the excise must be added to the rent and paid by the occupant as a separately-stated amount. All operators of a hotel, motel, or lodging house are required to obtain a license for each place of their business before operating it. The returns for each calendar month are due on or before the twentieth day of the following month. The administrative provisions applicable to domestic business corporations under General Laws, Chapter 63, are applicable to this excise.

With respect to the inheritance tax law, the 23 per cent surtax was eliminated and each of the rates in the tax table was increased by 25

<sup>4</sup> G.L., c. 64C, §1, as amended by Acts of 1966, c. 541, §1, effective after December 31, 1966.

<sup>5</sup> G.L., c. 64C, §§29-39, inserted by Acts of 1966, c. 435, §5.

<sup>6</sup> G.L., c. 64G, as inserted by Acts of 1966, c. 14, §25, effective April 1, 1966.

per cent.<sup>7</sup> These new rates apply to property or interests therein passing or accruing upon the deaths of persons who die after December 31, 1966.

**§22.18. Life insurance and annuities: Inheritance tax.** Only two cases, both involving the inheritance tax, were decided by the Supreme Judicial Court in state tax areas other than personal income and corporate taxes.<sup>1</sup> For almost 50 years, life insurance proceeds received by beneficiaries upon the death of the insured have been held to be exempt from inheritance taxation.<sup>2</sup> In *DeVincent v. Commissioner of Corporations and Taxation*,<sup>3</sup> the insured changed the beneficiary of his life insurance policies to the trustees of a revocable life insurance trust while in the hospital and approximately two months prior to his death. Upon his death, the Commissioner taxed the proceeds of the policies as a gift made in contemplation of death. Relying upon the *Tyler* and *Welch* cases,<sup>4</sup> the Court ruled that the proceeds of the insurance policies were not taxable as gifts in contemplation of death. Although recognizing that tax concepts have changed since the *Tyler* case, the Court did not find this "to be sufficient reason for changing by judicial decision the longstanding interpretation of what is now G.L., c. 65, sec. 1."

In *Cochrane v. Commissioner of Corporations and Taxation*,<sup>5</sup> a retired admiral elected under a statutory option to take a lesser retirement payment in order to provide a pension equal to 50 per cent of this lesser amount for his wife upon his death. The statute provided for an actuarial computation of the reduction in the admiral's retirement pay necessary to justify the government commitment to pay an annuity to his wife. The Supreme Judicial Court held that the annuity received by the admiral's wife upon his death had the characteristics of life insurance and was, therefore, not subject to the inheritance tax. The Court did, however, find that the death benefits received by the admiral's wife under a Massachusetts Institute of Technology pension plan were subject to tax. The MIT Pension Association was formed under Sections 39 and 40 of General Laws, Chapter 32. Under Section 41 of that chapter, the right of an employee to an annuity, pension, or endowment, and all his rights in the funds of such an association are exempt from taxation. The Court held, however, that the purpose of this section was to exempt the interests of participating members from property taxes only and not the inheritance tax.

<sup>7</sup> G.L., c. 65, §1, as amended by Acts of 1966, c. 698, §73.

§22.18. <sup>1</sup> See §§22.9-22.13, 22.15-22.16 *supra* for discussion of the state income and corporation tax cases.

<sup>2</sup> *Welch v. Commissioner of Corporations and Taxation*, 309 Mass. 293, 34 N.E.2d 611 (1941); *Tyler v. Treasurer and Receiver General*, 226 Mass. 306, 115 N.E. 300 (1917).

<sup>3</sup> 348 Mass. 758, 206 N.E.2d 81 (1965).

<sup>4</sup> See note 2 *supra*.

<sup>5</sup> 350 Mass. 237, 214 N.E.2d 283 (1966).

## F. LOCAL TAXATION

**§22.19. Legislative changes.** Consistent with past developments, most of the statutory amendments in the field of local taxation either increased or liberalized the exemptions from the property tax. The exemption for parsonages and official residences of certain religious officials was extended to the official residences occupied by district superintendents of the Church of the Nazarene<sup>1</sup> and by the rabbi of a Hebrew Synagogue or Temple.<sup>2</sup> The buildings owned by religious non-profit corporations and used exclusively in the administration of cemeteries, tombs and rites of burial are now exempt.<sup>3</sup> The maximum equity in real and personal property that may be held by a widow, a minor whose father is deceased, or a person over the age of 70 in order to qualify for a \$2000 exemption upon real estate owned and occupied by them as their domicile has been increased from \$8000 to \$14,000; however, the Commonwealth must annually reimburse the city or town for the amount of tax that otherwise would have been collected, except for the exemptions granted, from persons whose property exceeds \$8000.<sup>4</sup> The various exemptions granted to certain disabled war veterans, including their wives and parents under certain conditions, have been extended to Vietnam veterans.<sup>5</sup> A "Vietnam veteran" has been redefined to include any veteran who has served on active duty in the United States armed forces for more than 180 days between February 1, 1955, and the termination of the Vietnam campaign as declared by proper federal authority.<sup>6</sup> A \$2000 exemption upon real estate owned and occupied as her domicile has been granted to unmarried widows of soldiers or sailors who lost their lives in combat as members of the United States armed forces in military action at Quemoy and Matsu.<sup>7</sup> The \$8000 exemption granted in 1964 to the real estate owned and occupied as her domicile by an unmarried widow of a police officer killed in the line of duty has been extended to the unmarried widow of a fire fighter killed in the line of duty,<sup>8</sup> and to the surviving natural or adopted minor children of such a police officer or fire fighter when their mother is also deceased.<sup>9</sup>

§22.19. 1 G.L., c. 59, §5, cl. Eleventh, as amended by Acts of 1965, c. 212, §1, and applicable to real estate taxes levied for 1965 and thereafter.

2 G.L., c. 59, §5, cl. Eleventh, as amended by Acts of 1966, c. 216, §1, and applicable to real estate taxes levied for 1966 and thereafter.

3 G.L., c. 59, §5, cl. Twelfth, as amended by Acts of 1966, c. 262.

4 G.L., c. 59, §5, cl. Seventeenth, as amended by Acts of 1966, c. 371.

5 G.L., c. 59, §5, cls. Twenty-second through Twenty-second C, as amended by Acts of 1966, c. 359, and applicable to real estate taxes levied for 1966 and thereafter.

6 G.L., c. 4, §7, cl. Forty-third, as amended by Acts of 1966, c. 716.

7 G.L., c. 59, §5, cl. Twenty-second D, as inserted by Acts of 1965, c. 881. The city or town granting this exemption is reimbursed by the Commonwealth for the amount of tax that would otherwise be collected.

8 G.L., c. 59, §5, cl. Forty-second, as amended by Acts of 1965, c. 267, §1, and applicable to taxes assessed in 1965 and thereafter.

9 G.L., c. 59, §5, cl. Forty-third, as inserted by Acts of 1965, c. 267, §2, and applicable to taxes assessed in 1965 and thereafter.

The exemption of \$4000 granted to a person 70 years of age or over with respect to the real estate owned and occupied by him as his domicile has been amended several times in the past two years. One of the requirements had been that the taxpayer own and occupy as his domicile for the preceding five years either the property upon which exemption is sought or that property and other real property in the same city or town. This qualification has been liberalized so that the applicant has to own and occupy as his domicile any real property in the Commonwealth rather than in the same city or town, for the five preceding years.<sup>10</sup> In computing the net income limitation under this exemption, any payments received by the applicant under the federal social security law are not to be considered as income.<sup>11</sup> As a result of local revaluations which have increased property assessments, many elderly found that they either did not qualify for the exemption because the value of their real estate exceeded the \$14,000 limit or that the tax benefit of the exemption was significantly reduced by the higher assessments and correspondingly lower tax rates. In answer to their complaints, the exemption was amended to grant a \$4000 exemption against the assessment or a \$350 reduction of the actual taxes due, whichever is greater. The amount of real estate that may be held by the applicant and his spouse was also raised from \$14,000 to \$20,000.<sup>12</sup> This amendment may establish a precedent for similar changes in other exemptions in which the value of the exemption is also being reduced by the movement to full and fair cash value assessments.

In a further liberalization of exemptions, the statutory lien that the city or town heretofore possessed against the estate of the person receiving certain exemptions in the amount of the total amount of taxes from which the decedent was relieved has been repealed. Existing liens have also been wiped out.<sup>13</sup>

Another amendment exempted from taxation the property of the lodges of the Benevolent and Protective Order of Elks and their subsidiary building trusts; any incorporated instrumentality of the Grand Lodge of Massachusetts, Independent Order Sons of Italy; any incorporated instrumentality of the Massachusetts State Grange, Patrons of Husbandry, Inc.; and any incorporated instrumentality of the Grand Lodge of Massachusetts, Order of Sons of Italy in America or its filial lodges, so long as such property is principally and usually devoted to

<sup>10</sup> G.L., c. 59, §5, cl. Forty-first, as amended by Acts of 1966, c. 294, §1, and applicable to taxes assessed in 1966 and thereafter.

<sup>11</sup> G.L., c. 59, §5, cl. Forty-first, as amended by Acts of 1966, c. 419, approved on July 6, 1966.

<sup>12</sup> G.L., c. 59, §5, cl. Forty-first, as amended by Acts of 1966, c. 728, approved on September 12, 1966, and effective on October 19, 1966, under an emergency preamble filed by the Governor. The Attorney General has ruled that this amendment applies to 1966 real estate taxes. The assessors of a number of communities are contending that the amendment does not apply to 1966 taxes.

<sup>13</sup> G.L., c. 59, §5, cls. Seventeenth and Eighteenth, §5A, as amended by Acts of 1965, c. 620.



the benevolent and charitable purposes of said lodges, associations, or corporations.<sup>14</sup>

The exemption for property used in eliminating or reducing industrial wastes so as to abate or prevent the pollution of the waters of the Commonwealth has been entirely revised and clarified as part of the water pollution control program recently enacted. To qualify for exemption, the property must be certified by the Director of the Division of Water Pollution Control as effective in eliminating or reducing pollution to an acceptable level.<sup>15</sup>

In the administrative area, the interest on delinquent property taxes has been increased from four to six per cent. The rate of interest paid on the abatement of these taxes has been similarly raised.<sup>16</sup> The interest on the redemption of land taken or sold for nonpayment of taxes has also been increased from six and one half to eight per cent.<sup>17</sup> Applications for exemption under certain categories of exemptions have been extended from October to December 15 of the year to which the tax relates or, if the tax bill is sent after September 1, the application must be filed within three months after the date upon which the bill is sent.<sup>18</sup>

Under the motor vehicle excise, the exemption for motor vehicles owned and registered by certain disabled veterans and other specified individuals has been extended to persons who have suffered permanent impairment of vision of both eyes. The requirement that the motor vehicle be operated by the exempt individual for personal, non-commercial use has been replaced with a provision that the exemption in all cases is for not more than one motor vehicle owned and registered by the person exempted.<sup>19</sup> The exemption was made applicable in 1966 to persons who have suffered the loss or permanent loss of the use of both arms.<sup>20</sup>

**§22.20. Assessment practices.** Following the procedure used in the *Bettigole* case,<sup>1</sup> the petitioners in *Leto v. Assessors of Wilmington*,<sup>2</sup>

<sup>14</sup> Acts of 1966, c. 404, effective as of January 1, 1966.

<sup>15</sup> G.L., c. 59, §5, cl. Forty-fourth, as inserted by Acts of 1966, c. 700, §2. A similar exemption in G.L., c. 59, §5, cl. Thirty-ninth, has been repealed by Acts of 1966, c. 700, §1. See also §22.14, note 18 *supra*, for discussion of the corporate tax exemption for this same purpose.

<sup>16</sup> G.L., c. 59, §§57, 64, 69; c. 58A, §13, all as amended by Acts of 1965, c. 597, and applicable to taxes assessed in 1966 and thereafter.

<sup>17</sup> G.L., c. 60, §§62, 68, as amended by Acts of 1966, c. 263, and applicable to land purchased or taken under a tax title on or after August 8, 1966.

<sup>18</sup> G.L., c. 59, §§5, cl. Thirty-seventh, 59; c. 60, §3A, all as amended by Acts of 1965, c. 615, and effective on August 9, 1965.

<sup>19</sup> G.L., c. 60A, §1, as amended by Acts of 1965, c. 622, and effective January 1, 1966.

<sup>20</sup> G.L., c. 60A, §1, as amended by Acts of 1966, c. 140, and effective on July 5, 1966.

§22.20. <sup>1</sup> *Bettigole v. Assessors of Springfield*, 343 Mass. 223, 178 N.E.2d 10 (1961), noted in 1962 Ann. Surv. Mass. Law, §§10.5, 17.4, 17.5.

<sup>2</sup> 348 Mass. 144, 202 N.E.2d 922 (1964), noted in 1965 Ann. Surv. Mass. Law §11.10.

brought suit in equity, seeking declaratory and injunctive relief with respect to the assessments established for 1964 property taxes. They alleged that the assessors were deliberately and intentionally assessing real estate on a non-proportional and discriminatory basis. Recognizing that the granting of this type of wholesale relief "may seriously affect a town's ability to conduct its public services and cause great fiscal confusion," the Supreme Judicial Court directed the plaintiffs to other, if not wholly satisfactory, remedies for relief from disproportionate assessments. Before the entire city or town tax assessment would be enjoined, as was done in the *Bettigole* case, the Court listed four prerequisites: (1) basic facts must exist showing a deliberate and substantial violation of the constitutional and statutory requirements of proportionality; (2) the plaintiffs must show themselves to be directly, significantly, and adversely affected; (3) relief by ordinary abatement procedures or actions at law must be seriously inadequate; and (4) equitable relief is shown to be practicable and appropriate in the sense that the assessors' violations are so extensive as to warrant reasonable equitable interference with normal tax assessment and collection processes. Applying these four requirements, the Court found that the plaintiffs' allegations were diffuse and confusing and did not state a sufficient case for equitable relief.

The Court's reluctance to become involved in the revaluation of the taxable property of any city or town at the initiative of a group of taxpayers thereof and its emphasis on statutory remedies indicated that it wanted to strengthen these remedies and to find an alternative to the drastic equitable relief that it ordered in the *Bettigole* case. Both of these aims were accomplished in two decisions subsequent to *Leto*.

In *Shoppers' World, Inc. v. Assessors of Framingham*<sup>3</sup> the Court re-examined the scope of the remedy provided by the regular abatement procedure and construed the statutory provisions as providing a remedy for a taxpayer whose real estate is disproportionately assessed at an amount below fair cash value. For 74 years, the rule had been that the only question open on an application for abatement was whether the property was assessed at more than its fair cash value.<sup>4</sup> The taxpayer could not raise the question of whether his property was assessed at a higher percentage of fair cash value than that of other taxpayers in the community. The Supreme Judicial Court, following the rationale of the United States Supreme Court's decision in *Sioux City Bridge Co. v. Dakota County, Nebraska*,<sup>5</sup> held that a disproportionate assessment causes injury to the taxpayers who are discriminated against, and for which injury they are constitutionally entitled to an adequate remedy. The Court then held that the statutory provisions<sup>6</sup>

<sup>3</sup> 348 Mass. 366, 203 N.E.2d 811 (1965), noted in 1965 Ann. Surv. Mass. Law §11.10.

<sup>4</sup> *Lowell v. County Commissioners of Middlesex*, 152 Mass. 372, 25 N.E. 469 (1890).

<sup>5</sup> 260 U.S. 441, 43 Sup. Ct. 190, 67 L. Ed. 340 (1923).

<sup>6</sup> G.L., c. 59, §§59, 64, 65; c. 58A, §12B.

do provide a remedy to a taxpayer who is able to prove that there exists an intentional policy or scheme of valuing properties or classes of property at a lower percentage of fair cash value than that percentage which was in fact applied to his own property. If the taxpayer sustains his burden of proof, he is entitled to a reduction in his assessment to the level at which it would be proportional to the assessments of the class of property valued at the lowest percentage of fair cash value.

In *Coan v. Assessors of Beverly*<sup>7</sup> the Court was able to sanction a form of relief from disproportionate assessment practices without its having an immediate effect on city finances but which will effect a gradual and orderly revaluation of the entire city. It refused to allow decrees enjoining the assessors from all and any continuance of their allegedly illegal and discriminatory assessment practices in 1964 and 1965. The Court, however, did approve the following relief to be granted by the Superior Court under the taxpayers' suit:<sup>8</sup> (1) the assessors were directed to file in the Superior Court on or before January 14, 1966, a comprehensive plan for the revaluation at full and fair cash value of all taxable property in the city of Beverly in an orderly manner and with all deliberate speed, such revaluation to take effect as of January 1, 1967; (2) the plaintiffs were to be given an opportunity for a hearing upon the plan, if requested; (3) further suitable relief could be granted, including provision for interim reports of progress, for suitable filing in court of the final revaluation, and for notice of such filing to the parties involved; (4) new and further orders or injunctions could be issued as from time to time might be appropriate to carry out the purposes of the decree; and (5) the Superior Court would retain jurisdiction of the proceedings until the satisfactory completion of the orderly revaluation and could supervise the revaluation and modify any decree, injunction, and order, including extending the time for performance, if the public interest and considerations of justice require such an extension.

This procedure appears to have solved the revaluation dilemma. A city or town can now be compelled to assess its property at full value in a gradual and orderly manner, under continuing court jurisdiction and supervision, without fiscal chaos or the disruption of governmental functions. Since the *Coan* decision, a number of other cities and towns have begun a revaluation program either under an actual court decree or under the threat of one.

**§22.21. Exemption for elderly.** Three cases decided during the 1966 SURVEY year dealt with the \$4000 exemption granted to the elderly.<sup>1</sup> In *Assessors of Everett v. Formosi*<sup>2</sup> the Supreme Judicial Court held that an applicant owning a multiple-family dwelling and occupying a portion of it as his domicile, was entitled to the full \$4000

<sup>7</sup> 349 Mass. 575, 211 N.E.2d 50 (1965).

<sup>8</sup> Suit was filed pursuant to G.L., c. 40, §53.

§22.21. <sup>1</sup> G.L., c. 59, §5, cl. Forty-first.

<sup>2</sup> 349 Mass. 727, 212 N.E.2d 210 (1965).

exemption. The assessors had attempted to apply the exemption only against the proportionate part of the total assessed value which represented the part of the real estate used as the applicant's domicile. In *Kirby v. Assessors of Medford*,<sup>3</sup> the Court ruled that a person, otherwise qualifying for the exemption, who placed his home in a revocable trust is not entitled to the exemption. The exemption was interpreted as requiring not only the ownership of a sufficient beneficial interest but also the ownership of a record legal interest. As held in *Breare v. Assessors of Peabody*,<sup>4</sup> a person otherwise qualifying for the exemption who transfers his home to another, but reserves an interest as tenant in common with the grantee during the grantor's life, has a sufficient property interest in the real estate to entitle him to the recognition of the exemption of that interest.

<sup>3</sup> 1966 Mass. Adv. Sh. 395, 215 N.E.2d 99.

<sup>4</sup> 350 Mass. 391, 215 N.E.2d 102 (1966).